RESTRAINTS OF TRADE — CONTRACTS NOT TO DEAL WITH COMPETITORS — THE CLAYTON ACT. — The defendant manufacturing company, controlling 95% of the shoe machinery business of the country, leased its machines subject to various restrictive covenants: *e.g.*, the lessee was forbidden to use the defendant's machines on shoes upon which other operations were performed by machines of defendant's competitors; and the lessee was required to buy all supplies from the defendant, to pay royalties on shoes made with machines not owned by the defendant, etc. The District Court enjoined the use of the leases, holding them illegal under the Clayton Act. (38 STAT. AT L. 731, § 3). *Held*, that the decree be affirmed. *United Shoe Machinery Corp.* v. *United States*, 42 Sup. Ct. Rep. 363.

The plaintiff, a manufacturer of patterns for garments, contracted to supply the defendant, a retail merchant. The defendant agreed not to sell during the term of the lease patterns made by competitors of the plaintiff. The plaintiff seeks to enjoin a breach of this promise. The plaintiff controlled 40% of the pattern agencies in the country. The District Court dismissed the bill as stating a contract illegal under the Clayton Act. (38 STAT. AT L. 731, §3). *Held*, that the decree be affirmed. *Standard Fashion Co.* v. *Magrane-Houston Co.*, 42 Sup. Ct. Rep. 360.

For a discussion of the principles involved, see NOTES, *supra*, p. 86.

SALES — STATUTE OF FRAUDS — GOODS TO BE MANUFACTURED BY A THIRD PARTY FOR THE BUYER AT THE ORDER OF THE SELLER. — The plaintiff contracted to sell the defendant certain styles of shoes which were to be manufactured by a third party at the order of the seller, and which were not suitable for sale to others in the usual course of the seller's business. There was no writing sufficient to take the transaction out of the statute of frauds. The seller delivered the shoes to the buyer who refused to receive them. *Held*, that judgment be entered for the defendant. *Atlas Shoe Co.* v. *Rosenthal*, 136 N. E. 107 (Mass.).

At common law, the Massachusetts rule, supported by the weight of authority in this country, was that a contract for the delivery of goods above a certain value was a contract of sale within the statute of frauds unless the goods were to be manufactured by the seller for the buyer and were not suitable for sale to others in the ordinary course of the seller's business. *Mixer* v. *Howarth*, 21 Pick. (Mass.) 205; *Goddard* v. *Binney*, 115 Mass. 450. See WILLISTON, SALES, § 55. If, however, the goods were to be manufactured by another for the buyer at the order of the seller, it was a contract of sale within the statute of frauds. *Smalley* v. *Hamblin*, 170 Mass. 380, 49 N. E. 626; *Millar* v. *Fitzgibbons*, 9 Daly (N. Y.) 505; *Edwards* v. *Grand Trunk R. R.*, 48 Me. 379. But there was a considerable body of authority holding that where the goods which the seller procured to be manufactured for the buyer were not vendible in the general market, the transaction did not come within the statute. *Bird* v. *Muhlinbrink*, 1 Rich. Law (S. C.) 199; *Abbott* v. *Gilchrist*, 38 Me. 260; *Forsyth* v. *Mann*, 68 Vt. 116, 34 Atl. 481; *Morse* v. *Canaswacta Knitting Co.*, 154 App. Div. 351, 139 N. Y. Supp. 634. In states which have adopted the provision of the Uniform Sales Act there should be no further confusion on this point. See UNIFORM SALES ACT § 4. The Sales Act embodies the Massachusetts rule. The words "by the seller" are clear and unambiguous. *Eagle Paper Box Co.* v. *Gatti-McQuade Co.*, 164 N. Y. Supp. 201. For this reason the present case is indisputably right.

STATUTES — CONSTRUCTION — EFFECT OF TRANSPORTATION ACT OF 1920 ON CONTRACTUAL PERIOD OF LIMITATION. — An interstate shipment of tin, consigned to the defendant in error under a contract incorporating

the conditions of the uniform bill of lading, was looted en route. Suit was not instituted within the limitation provided for by the bill of lading. In replication to a defense setting forth the limitation, the consignee relied on the Transportation Act of 1920, which directed that the time of federal control of railroads be deducted in computing "periods of limitation in actions against carriers . . . for causes of action arising prior to federal control." (41 STAT. AT L. 462, § 206 f.) *Held*, that the Transportation Act did not apply to limitations arising out of contract. *New York Central R. R. Co.* v. *Lazarus*, 278 Fed. 900 (2nd Circ.).

The United States Supreme Court has held that statutes of limitation in actions on personal debts may be suspended without violating the constitutional guaranty of due process, and has distinguished debts, where the statutes bar only a remedy, and property, where the operation of the statutes vests rights analogous to prescription. *Campbell* v. *Holt*, 115 U. S. 620. The principal case endeavors to add a further distinction between periods of limitation imposed by statute, and those created by contract. The opinion suggests that to hold the contractual limitation within the suspending force of the Transportation Act would be unconstitutional, the court relying on the argument that the completion of such a limitation destroys liability and vests a right to assert the defense. See *Lawrence* v. *City of Louisville*, 96 Ky. 595, 29 S. W. 450; *The Harrisburg*, 119 U. S. 199, 214. See also WOOD, LIMITATIONS, § 11. This reasoning seems unnecessary, in view of the construction adopted by the court, by which the words "periods of limitation now prescribed by state or federal statutes" — used generally throughout the act — are held to qualify the words "periods of limitation" used in the clause in question, and to restrict the operation of that clause to statutory periods of limitation.

TAXATION — GENERAL LIMITATIONS ON THE TAXING POWER — STATE TAX ON IMPORTS. — Oil was imported in tank steamers from Mexico which on arrival at the city of South Portland was pumped into tanks on shore there to remain until drawn into tank cars and trucks to be delivered to customers. While stored in the tanks the oil was taxed by the city as part of the property of the plaintiff who thereupon sought to avoid the tax on the ground that it was contrary to the Constitution of the United States which prohibits the state from laying imposts or duties on imports without the consent of Congress. (U. S. CONST., Art. I, § 10.) *Held*, that the city may assess such tax. *Mexican Petroleum Corp.* v. *City of South Portland*, 115 Atl. 900 (Me.).

The point at which goods lose their character as imports so as to become taxable by a state has been determined to be when the original package in which the goods have been brought into the state has been broken. *Brown* v. *Maryland*, 12 Wheat. (U. S.) 419; *May* v. *New Orleans*, 178 U. S. 496. But this test is by no means conclusive and at times others must be resorted to. *Austin* v. *Tennessee*, 179 U. S. 343; *Mobile* v. *Waring*, 41 Ala. 139. See *People* v. *Schmidt*, 218 N. Y. 256, 112 N. E. 755. Instead, then, of stretching the original package doctrine to cover cases of which the court had no conception when the doctrine was originated, as was done in the principal case, it would be appropriate to determine whether the goods have become part of the general mass of property within the state merely from the way the goods are treated. Thus in the principal case, a controlling consideration is the fact that the oil was placed in tanks from which the plaintiff drew to supply its customers and was treated as part of the plaintiff's supply within the state available for the purpose of meeting the plaintiff's obligations. Authority for this method of approach is found in cases which have determined the point at which gas in subsidiary pipe lines fed from